

11

United States
Circuit Court of Appeals
For the Ninth Circuit.

RICHARD E. KING,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Wash-
ington, Northern Division.

FILED

MAR 13 1924

F. D. MORGENTHAU

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

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315 Lyon Building, Seattle, Washington.

THOMAS P. REVELLE, Esq., United States At-
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310 Federal Building, Seattle, Washington.

MATTHEW W. HILL, Esq., Assistant United
States Attorney, Attorney for Defendant in
Error,

310 Federal Building, Seattle, Washing-
ton. [1*]

United States District Court, Western District of
Washington, Northern Division.

May, 1923, Term.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

*Page-number appearing at foot of page of original certified Tran-
script of Record.

INDICTMENT.

Vio. Narcotic Drugs Import and Export Act.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America, being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That RICHARD E. KING, on the sixteenth day of April, in the year of our Lord one thousand nine hundred twenty-three, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this District Court, then and there being, did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently, and contrary to law import and bring into the United States from a foreign place to these grand jurors unknown, a certain quantity, to wit, two hundred eighty-eight (288) five-tael tins of a certain preparation of opium, to wit, opium prepared for smoking, a more particular description thereof being to these grand jurors unknown; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [2]

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That RICHARD E. KING, on the sixteenth day of April, in the year of our Lord one thousand nine hundred twenty-three, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Honorable Court, then and there being, did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently buy, receive and conceal a certain quantity, to wit, two hundred eighty-eight (288) five-tael tins of a certain preparation of opium, to wit, opium prepared for smoking, a more particular description thereof being to these grand jurors unknown, said preparation of opium prepared for smoking theretofore having been knowingly, wilfully, unlawfully, feloniously, and fraudulently and contrary to law imported and brought from a foreign place to these grand jurors unknown into the United States, as he, the said RICHARD E. KING, at the time of said buying, receiving and concealing well knew; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

E. E. HUGHES,

Assistant United States Attorney.

A true bill.

PLINY L. ALLEN,

Foreman Grand Jury.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S.

District Court, May 16, 1923. F. M. Harshberger,
Clerk. [3]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

PETITION TO SUPPRESS EVIDENCE.

Comes now the defendant above named, and re-
spectfully petitions and shows to the Court, as fol-
lows:

I.

That the defendant is under arrest for an alleged violation of the Harrison Drug Act, and a true bill has been returned by the grand jury for the Western District of Washington, Northern Division, charging the said defendant with certain offenses contrary to the provisions of said Act, and reference is hereby made to said indictment, and by such reference made a part of this petition; that the United States of America, and the United States District Attorney of this District, and the officers charged by law with the enforcement of the Harrison Drug Act, have in their possession and under their control certain property and effects which they intend to use as evidence against this defendant in this court

at the time of trial, unless the same be suppressed. That the said property and effects were illegally seized and are now unlawfully held, in the manner heretofore alleged, and the Government will attempt to use said effects and materials thus seized and will attempt to introduce testimony supported by and based upon said effects and materials secured by its illegal seizure, unless the same be suppressed; that the property seized, as petitioner is informed, consists of certain narcotics and a certain flashlight.

[4]

II.

That all of said articles heretofore mentioned were illegally and unlawfully seized without due process of law, substantially under the following circumstances: That heretofore, to wit, on or about the 16th day of April, 1923, Officers Majewski and Joe Bianchi, city policemen, stopped the automobile of the petitioner, while he was driving along the highway known as Spokane Street, at the intersection of Spokane Street and Marginal Way, in a lawful and peaceful manner, and the said officers Majewski and Bianchi, without a search-warrant or any warrant, ordered the petitioner to stop his car by sticking a sawed-off shotgun into his body, and proceeded without the consent of your petitioner, and illegally and unlawfully, and without any warrant of law, to search said automobile, and while the defendant protested against said search, the said officers aforesaid proceeded to search the tonneau of said automobile and that there was in the tonneau of said car, securely wrapped in burlap, a

package, the contents of which were unknown to your petitioner, and that the said officers broke said package open, and examined into the contents of the same, and seized said package and the contents thereof, which had been placed in said automobile without the knowledge of your said petitioner, and thereafter called in A. B. Hamer, a revenue officer, and turned the said package over to him, and that no charge whatsoever was made against your petitioner by the said police officers for the violation of any law or ordinance of the State of Washington or the city of Seattle; but that thereafter, based upon said evidence claimed to have been secured by said unlawful search and seizure, the said defendant was arrested and detained, and that said search and seizure was unlawful and illegal for the following reasons:

a. That said search and seizure was unlawful for the [5] reason that the said officers making the search and seizure, failed and neglected to secure a search-warrant to search the automobile of your said petitioner, and at the time of said search and seizure your petitioner was proceeding in an orderly and lawful manner along the highways of the city of Seattle, without giving cause for his detention or arrest.

b. That the said officers Majewski and Bianchi were police officers of the city of Seattle, county of King, State of Washington, and were not Internal Revenue officers, nor officers authorized by law to search and seize, or arrest and detain, persons for violation of federal statutes, and that said officers

had no authority whatsoever to have searched the car of your said petitioner without a search-warrant therefor, nor to have seized any article in said car contained without a search-warrant, nor to use the same as evidence in the prosecution for the violation of a federal statute.

WHEREFORE your petitioner prays that an order be entered herein suppressing each and all of the said items and property mentioned in the foregoing petition, and suppressing the introduction of any evidence procured by or through the illegal search and seizure and that the United States of America be estopped from introducing such items as evidence against the defendant at the time of trial.

EDWARD H. CHAVELLE,

Attorney for Defendant.

315 Lyon Building, Seattle, Washington. [6]

United States of America,
Western District of Washington,—ss.

Richard E. King, being first duly sworn, on oath deposes and says: That he is the defendant named in the foregoing petition to suppress evidence; that he has read the same, knows the contents thereof, and believes the same to be true.

RICHARD E. KING.

Subscribed and sworn to before me this 23d day of May, 1923.

[Notary Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle. [7]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

AFFIDAVIT OF RICHARD E. KING.

United States of America,
Western District of Washington,—ss.

Richard E. King, being first duly sworn, on oath deposes and says: That the search and seizure mentioned in the foregoing petition was made on the 16th day of April, 1923, while the defendant was driving his automobile along the highway known as Spokane Street, at the intersection of Spokane Street and Marginal Way, in a lawful and peaceful manner, when city police officers Majewski and Bianchi without a search-warrant or any warrant, ordered petitioner to stop his car, by sticking a sawed-off shotgun into his body, and proceeded without the consent of affiant, illegally and unlawfully, and without any warrant of law, to search said automobile, and while defendant protested against said search, the said officers aforesaid proceeded to search the tonneau of said automobile, and that there was in the tonneau of said car, se-

curely wrapped in burlap, a package, the contents of which were unknown to affiant, and that the said officers broke said package open, and examined into the contents of the same, and seized said package and the contents thereof, which had been placed in said automobile without the knowledge of affiant, and thereafter called in A. B. Hamer, a revenue officer, and turned the said package over to him, and that no charge whatsoever was made against affiant by the said police officers for the violation of any [8] ordinance or law of the city of Seattle or the State of Washington; but that thereafter, based upon said evidence claimed to have been secured by said unlawful search and seizure, and said defendant was arrested and detained and held to answer to the United States District Court for alleged violation of the Harrison Drug Act.

RICHARD E. KING.

Subscribed and sworn to before me this 23d day of May, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received a copy of the within petition to suppress this 4th day of June, 1923.

THOS. P. REVELEE,
H.R.

Attorney for _____.

[Endorsed]: Filed in the United States District Court. Western District of Washington, Northern Division. Jun. 4, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING,
Defendant.

HEARING ON PETITION TO SUPPRESS
EVIDENCE.

Now on this 25th day of June, 1923, this cause comes on for hearing on petition to suppress evidence, which is argued and denied and exception allowed.

Journal 11, page 327. [10]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING,
Defendant.

AMENDED PETITION TO SUPPRESS EVIDENCE.

Comes now the defendant above named, and re-

spectfully petitions and shows to the Court as follows:

I.

That the defendant is now under arrest for an alleged violation of the Narcotic Drug Act, as of February 9, 1909, as amended by the Act of January 17, 1914, as amended by the Act of May 26, 1922; that a true bill has been returned by the grand jury for the Western District of Washington, Northern Division, charging the said defendant with certain offenses contrary to the provisions of said Act, and reference is hereby made to said indictment, and by such reference made a part of this petition; that the United States of America and the United States District Attorney of this district and the officers charged by law with the enforcement of said Act as amended, have in their possession and under their control, certain property and effects which they intend to use as evidence against this defendant in this court at the time of trial, unless the same be suppressed; that the said property and effects were illegally seized and are now unlawfully held, in the manner heretofore alleged, and the Government will attempt to introduce testimony supported by and based upon the said effects and property secured by its illegal search and seizure, unless the same be suppressed; that the property seized, as petitioner is informed and believes, consists of certain [11] narcotics, a flashlight, keys, lodge cards and other personal effects of the said defendant.

II.

That all of said articles hereinbefore mentioned, were illegally and unlawfully seized, without due process of law, substantially under the following circumstances: That heretofore, to wit, on the 16th day of April, 1923, a special agent of the United States Treasurer, A. B. Hamer, stopped the automobile of the petitioner, while he was driving along the highway known as Spokane Street, at the intersection of Spokane Street and Marginal Way; that the said petitioner was proceeding in a lawful and peaceful manner, and the curtains of said automobile were up, and that no one could see inside the tonneau of said car; that the said A. B. Hamer, without a search-warrant or any warrant, ordered the petitioner to stop his car, and proceeded without the consent of petitioner, and over his protest, and illegally and unlawfully and without any warrant of law, to search said automobile. While the defendant protested against said search, the officer aforesaid proceeded to search the tonneau of said car, and there was in the tonneau of said automobile, securely wrapped in burlap, a package, the contents of which were unknown to affiant; that thereafter the said officer raised the hood of said car, and claimed to have found thereunder, other packages, and that the said packages had been placed in the automobile without the knowledge of your petitioner; that thereafter, based upon said evidence claimed to have been secured by said unlawful search and seizure, said defendant was arrested and detained, and that said search and seiz-

ure were illegal and unlawful for the following reasons:

a. That said search and seizure were unlawful for the reason that the said officers making the search and seizure, failed and neglected to secure a search-warrant to search the automobile of [12] your petitioner, and at the time of said search and seizure, your petitioner was proceeding in an orderly and lawful manner along the highways of the city of Seattle, without giving cause for his detention and arrest.

WHEREFORE your petitioner prays that an order be entered herein, suppressing each and all of the said items and property mentioned in the foregoing petition, and suppressing the introduction of any evidence procured by or through the illegal search and seizure, and that the United States of America be estopped from introducing such items as evidence against the defendant at the time of trial.

EDWARD H. CHAVELLE,

Attorney for Defendant,

315 Lyon Building, Seattle, Washington.

United States of America,

Western District of Washington,—ss.

Richard E. King, being first duly sworn, on oath deposes and says: That he is the defendant in the above-entitled action; that he has read the foregoing amended petition to suppress evidence, knows the contents thereof, and that the facts therein stated are true and correct, as he verily believes.

RICHARD E. KING.

Subscribed and sworn to before me this 29th day of October, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle. [13]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING,
Defendant.

AFFIDAVIT OF RICHARD E. KING.

United States of America,
Western District of Washington,
County of King,—ss.

Richard E. King, being first duly sworn, on oath deposes and says: That the search and seizure mentioned in the foregoing petition, was made on the 16th day of April, 1923, while the defendant was driving his automobile along the highway known as Spokane Street, at the intersection of Spokane Street and Marginal Way, in a lawful and peaceful manner, when a special agent of the United States Treasury Department, located at Seattle, Washington, namely, A. B. Hamer, stopped the

said defendant's automobile without a search-warrant or any warrant, and proceeded without the consent of the affiant, illegally and unlawfully, and without any search-warrant or any warrant of law, to search said automobile, and while the defendant protested against said search, the said officer proceeded to search the said automobile, and there found a package, the contents of which were unknown to affiant, which was securely wrapped in burlap, in the tonneau of said car, and the said officer broke said package open, and examined the contents of the same; that there was another officer, whom the affiant believes to be John W. Majewski, with the said A. B. Hamer at said time and place; that they then raised the hood of the automobile, and found under the hood of the automobile, other packages, which had been placed in said automobile without the knowledge of [14] affiant; that no charge whatsoever was made against said affiant by the said officers, for the violation of any law or ordinance, but that thereafter, based upon said evidence claimed to have been secured by said unlawful search and seizure, the said affiant was arrested and detained, and held to answer to the United States District Court for the alleged violation of the Narcotic Drugs Act, and the regulations thereunder, being the act of February 9, 1909, as amended by the act of January 17, 1914, as amended by the act of May 26, 1922; that the reason for the making of this supplemental affidavit in support of the petition to suppress is that at the time of the making of the former affidavit, the affiant was not certain of the

names of the officers, until there was served upon him the affidavit of said A. B. Hamer, and he did not know that the said A. B. Hamer was the officer at whose instigation the said search was made; that said affidavit of said A. B. Hamer was verified on the 14th day of June, 1923, and was a part of the papers in opposition to the defendant's petition herein to suppress the evidence.

RICHARD E. KING.

Subscribed and sworn to before me this 29th day of October, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received a copy of the within petition this 30th day of Oct. 1923.

THOS. P. REVELLE,
Attorney for Govt.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 30, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [15]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

HEARING ON AMENDED PETITION TO
SUPPRESS EVIDENCE.

Amended motion of defendant to suppress evidence was argued by both sides. Said motion was denied, exception allowed.

Journal 11, page 466. [16]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

ARRAIGNMENT AND PLEA.

Now on this 28th day of May, 1923, the above defendant comes into open court for arraignment

accompanied by his attorney E. H. Chavelle, and says that his true name is Richard E. King. Whereupon the reading of the information is waived and he here and now enters his plea of not guilty.

Journal 11, page 179. [17]

United States District Court, Western District of
Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

AFFIDAVIT OF A. B. HAMER.

United States of America,
Western District of Washington,
Northern Division,—ss.

A. B. Hamer, being first duly sworn on his oath, deposes and says: That he is now, and at all times herein mentioned has been special agent of the United States Treasury Department located at Seattle, Washington; that affiant and John W. Majewski, city detective for the city of Seattle, having had reliable and positive information that Richard E. King, defendant above named, was engaged in the transportation and delivery of smoking opium and other narcotics, and that said defendant handled

large quantities of opium for certain Chinese of the city of Seattle, and defendant having passed west on Spokane Street in a Mitchell automobile to a point near the Fisher Flouring Mills early on the morning of April 16, 1923, affiant and said Majewski stationed themselves on Spokane Street near East Marginal Way, Seattle, Washington, where defendant would naturally pass on his way back to the city, and awaited defendant's return; that defendant approached said place about 3:50 o'clock A. M., April 16, 1923, driving a Mitchell automobile. Defendant was halted by affiant and said Majewski and immediately placed under arrest, and two hundred eighty-eight (288) five-tael tins of smoking opium contained in five (5) sacks were found by affiant and said Majewski in said automobile; three (3) sacks of which were [18] found on the floor of said car, and two (2) sacks of which were found under the hood of said car.

Affiant further states that he and said Majewski have had positive information for several months past that defendant was aiding certain Chinese in the transportation and disposition of narcotics, and usually employed in this work a Chandler automobile bought for him by Chinese in May, 1922; that on the morning in question defendant apparently fearing that the Chandler automobile was under observation, drove it down town and left it, securing a Mitchell car instead for the purpose of delivering said narcotics.

That affiant denies each and every allegation contained in the affidavit of Richard E. King in con-

flict with this affidavit, and especially denies that the contents of said sacks were unknown to defendant, the defendant having admitted immediately after his arrest that he knew said sacks contained smoking opium.

A. B. HAMER.

Subscribed and sworn to before me this 11th day of June, 1923.

[Seal U. S. District Court]

FRANK L. CROSBY, Jr.,

Dep. Clerk, U. S. Dist. Court, Western Dist. of Wash.

Copy rec'd.

EDWARD H. CHAVELLE,

Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 20, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

VERDICT.

We, the jury in the above-entitled cause, find the defendant Richard E. King is guilty, as charged in Count I of the indictment herein; and further find the defendant Richard E. King is guilty, as charged in Count II of the indictment herein.

T. H. PIDDUCK,
Foreman.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 30, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Journal 11, page 466. [20]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

MOTION FOR NEW TRIAL.

Comes now the defendant, Richard E. King, and moves the Court to set aside the verdict of the jury heretofore entered herein, and grant a new trial, on the following grounds:

1. Error in law committed by the trial Court in refusing to grant the motion of the defendant to suppress the evidence.

2. That said verdict was against and contrary to law.

3. That said verdict was against and contrary to the evidence.

4. Insufficiency of the evidence to justify the verdict.

4. Errors of law occurring during the trial, and excepted to by the said defendant.

6. Refusal of the Court to grant motion of the defendant to dismiss Counts I and II of said indictment on the ground of the insufficiency of the evidence to sustain either count.

7. Error of the trial Court in refusing to direct a verdict for said defendant of not guilty.

8. Refusal of the Court to instruct the jury as requested by the instructions of the defendant.

Dated this 3d day of November, 1923.

EDWARD H. CHAVELLE,

Attorney for Defendant.

315 Lyon Building, Seattle, Washington. [21]

Due service of within motion for new trial admitted, and receipt of copy thereof acknowledged Nov. 3, 1923.

THOS. P. REVELLE,

U. S. District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING,
Defendant.

MOTION IN ARREST OF JUDGMENT.

Comes now Richard E. King, the defendant in the above-entitled action, and moves the Court to arrest judgment and sentence herein, upon the ground and for the reason, among others:

1. That the evidence introduced at the trial was insufficient to sustain the verdict rendered herein.

2. That the motion to suppress the evidence by reason of the illegal and unlawful search and seizure was erroneously denied.

3. Variance between the indictment and proof introduced at the time of the trial.

Dated this 3d day of November, 1923.

EDWARD H. CHAVELLE,
Attorney for Defendant.

315 Lyon Building, Seattle, Washington.

Due service of within motion in arrest of judgment admitted, and receipt of copy thereof acknowledged, Nov. 3, 1923.

THOS. P. REVELLE,
U. S. District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

HEARING ON MOTION FOR NEW TRIAL
AND ARREST OF JUDGMENT.

Now on this 5th day of November, 1923, this cause comes on for hearing on motion for new trial and in arrest of judgment which was argued and both were denied, with exception allowed. Government moves for judgment and sentence. Sentence is passed at this time.

Journal No. 11, page 374. [24]

United States District Court, Western District of
Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

SENTENCE.

Comes now on this 5th day of November, 1923, the said defendant Richard E. King into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant is guilty of violating the Narcotic Drugs Import and Export Act and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of six (6) years on each count of the indictment, terms to run concurrently at hard labor and to pay a fine of \$50.00 on each of said counts I and II. And the said de-

fendant Richard E. King is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree No. 3, page 494. [25]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

PETITION FOR WRIT OF ERROR.

Comes now the above-named defendant, Richard E. King, by his attorney and counsel, Edward H. Chavelle, and respectfully shows that on the 30th day of October, 1923, a jury empanelled in the above-entitled court and cause, returned a verdict finding said Richard E. King guilty of the indictment heretofore filed in the above-entitled court and cause, and thereafter, within the time limited by law, under rules and order of this court, defendant moved for a new trial, which motion was by the Court overruled, and exception thereto allowed, and likewise, within said time filed his motion for arrest of judgment, and which was by the Court overruled, and to which an exception was allowed; and thereafter, on the 5th day of November, 1923,

this defendant was by order and judgment and sentence in the above-entitled court in said cause sentenced.

And your petitioner, feeling himself aggrieved by this verdict, and the judgment and the sentence of the Court entered herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence, to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that said proceedings as herein recited, and as more fully [26] set forth in the assignments of error presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and ruling of the Court provided, and wherefore, premises considered, your petitioner prays that a writ of error issue, to the end that said proceedings of the District Court of the United States of the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such

final determination, said defendant be admitted to bail.

EDWARD H. CHAVELLE,
Attorney for Defendant.

315 Lyon Building, Seattle, Washington.

Due service of within petition for writ of error admitted, and receipt of copy thereof acknowledged, this 13th day of November, 1923.

THOS. P. REVELLE,
United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

ASSIGNMENTS OF ERROR.

Now comes the above-named defendant, Richard E. King, by Edward H. Chavelle, his counsel, and says that in the record and proceedings in the above-entitled cause, there is manifest error, in this, to wit:

1. The Court erred in overruling the motion of defendant to suppress the evidence, which motion was made before the case was called for trial and renewed before the jury was sworn and examined on their *voir dire*, and again before the jury was sworn to try the case, for the reason that all the evidence was secured by an unlawful search and seizure.

Timely exceptions were taken to the action of the Court in denying the motions to suppress the evidence. (Trans., pp. 3-6.)

2. The Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, as to statements made by the defendant, and of the surrounding circumstances as a part of the *res gestae*, for the reason that said evidence was secured through said unlawful search.

3. That the Court erred in refusing to allow to go to the jury, evidence of the previous good character of the defendant.

4. That the Court erred in allowing testimony to go to the jury during the trial of the case over the objection of defendant's counsel, which was excepted to, and exception allowed. [28]

4. That the Court erred in its refusal to instruct the jury as requested by the defendant, as follows.

I.

The Court directs you to find a verdict for the defendant, upon the ground of the insufficiency of the evidence, the search and seizure having been illegal and unlawful, in that while the defendant

was proceeding in a peaceful manner upon a highway in the city of Seattle, county of King, State of Washington, within the jurisdiction of this Honorable Court, he was halted by a federal agent, and his car searched by said federal agent, and the defendant placed under arrest by said federal agent, all without any search-warrant whatsoever, and the evidence obtained was so obtained by said unlawful search and seizure.

II.

The Court instructs you to find a verdict for the defendant, upon the ground of the insufficiency of the evidence, the search and seizure having been illegal and unlawful, in that while the defendant was proceeding in a peaceful manner upon the highway in the city of Seattle, county of King, State of Washington, within the jurisdiction of this Honorable Court, he was halted by a federal agent, and his car searched by said federal agent, and the defendant placed under arrest by said federal agent, all without any search-warrant whatsoever, and the evidence obtained was so obtained by said unlawful search and seizure.

III.

You are directed that the evidence in this case has shown that the defendant is the operator of a for hire automobile, and if the defendant has satisfied the jury that he has no knowledge of, and used due diligence to prevent the presence of the opium in said automobile, then it is your duty to acquit him.

[29]

5. The Court erred in overruling the motion of

the defendant for a dismissal of said indictment, made at the close of the evidence introduced by the Government in support of the indictment, which motion was based upon the ground that all of the material evidence was secured by an unlawful search and seizure of the defendant's automobile without a search-warrant.

6. The Court erred in overruling the motion of the defendant for a direct verdict of acquittal, made at the close of the entire case, and before it was submitted to the jury, which motion was based upon the ground that there was not evidence offered except that secured by an illegal search and seizure.

7. The Court erred in denying the motion of said defendant for a new trial, which motion was made in due time after the jury had returned a verdict of guilty as charged in Counts I and II of the indictment, upon the following grounds:

1. Error in law committed by the trial Court in refusing to grant the motion of the defendant to suppress the evidence.

2. That said verdict was against and contrary to law.

3. That said verdict was against and contrary to the evidence.

4. Insufficiency of the evidence to justify the verdict.

5. Errors of law occurring during the trial, and excepted to by the said defendant.

6. Refusal of the Court to grant motion of the defendant to dismiss counts I and II of said indict-

ment on the ground of the insufficiency of the evidence to sustain either count.

7. Error of the trial Court in refusing to direct a verdict for said defendant of not guilty.

8. Refusal of the Court to instruct the jury as requested [30] by the instructions of the defendant.

8. The Court erred in denying the motion of the defendant, in arrest of judgment, which motion was made in due time after the jury had returned a verdict of guilty as charged on counts I and II of the indictment, upon the following grounds:

1. That the evidence introduced at the trial was insufficient to sustain the verdict rendered herein.

2. That the motion to suppress the evidence by reason of the illegal and unlawful search and seizure, was erroneously denied.

3. Variance between the indictment and proof introduced at the time of trial.

WHEREFORE, the said Richard E. King, defendant, prays that the judgment be reversed, and that the said Court be directed to grant a new trial of said cause.

EDWARD H. CHAVELLE,
Attorney for Defendant.

Received a copy of the within assignment of errors, this 13th day of November, 1923.

THOS. P. REVELLE,
U. S. Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Nov. 13, 1923. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [31]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

On this 13th day of November, 1923, came the defendant, Richard E. King, by his attorney, Edward H. Chavelle, and files herein and presents to the Court his petition praying for the allowance of a writ of error and assignment of error intended to be urged by him, praying also, that a transcript of the records and proceedings and papers upon which judgment herein was rendered, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the defendant giving bond according to law in the sum of \$7500.00, which shall operate as a supersedeas bond.

Dated at Seattle, Washington, this 13th day of November, 1923.

JEREMIAH NETERER,
Judge.

Received a copy of the within order this 13th day of November, 1923.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [32]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7643.

RICHARD E. KING,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

BOND ON APPEAL.

We, Richard E. King, as principal, and Genevieve Johnson and Sidney Brunn, as sureties, all of Seattle, Washington, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of Seven Thousand Five Hundred Dollars (\$7500.00) lawful money of the United States, to be levied on our goods and chattels, lands

and tenements, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs and executors, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas in the above-entitled cause a writ of error has been issued to the Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered therein, and an order has been entered fixing the amount of the bail bond for the release of the defendant, Richard E. King, upon bail, pending the determination of said writ of error by said appellate court, in the sum of \$7500.00.

Now, therefore, if the said Richard E. King, as principal obligor, shall appear and surrender himself in the above-entitled court and from time to time thereafter as may be required, to answer any further proceedings, and shall obey and perform any judgment or order which may be had or rendered in said cause, and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit, and [33] shall not depart from said District without leave first having been obtained from the Court, then this obligation shall be null and void; otherwise in full force and effect.

IN WITNESS WHEREOF, we have set our hands and seals this 6th day of November, 1923.

RICHARD E. KING,

Principal.

GENEVIEVE JOHNSON,

SIDNEY BRUNN,

Sureties.

United States of America,
Western District of Washington,—ss.

Genevieve Johnson and Sidney Brunn, being first duly sworn, on oath each for himself and not one for the other, deposes and says: That he is a resident of the above district, and that after paying all just debts and liabilities, he is worth the sum of Fifteen Thousand Dollars in real property subject to execution within said district, over and above all exemptions, and exclusive of community interests, being his sole and separate property.

GENEVIEVE JOHNSON.

SIDNEY BRUNN.

Subscribed and sworn to before me this 6th day of November, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

O. K.—J. W. HOAR,
Asst. U. S. Attorney.

Approved:

NETERER,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [34]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:
That we, Richard E. King, as principal, and Gene-
vieve Johnson and Sidney Brunn, of Seattle, Wash-
ington, as sureties, jointly and severally acknowl-
edge ourselves to be indebted to the United States
of America, in the sum of Seven Thousand Five
Hundred Dollars, lawful money of the United
States, to be levied on our goods and chattels, lands
and tenements, upon this condition:

Whereas, the said Richard E. King, has sued
out a writ of error from the judgment of the Dis-
trict Court of the United States for the Western
District of Washington, in the case in said court
wherein the United States of America is plaintiff
and Richard E. King is defendant, for a review
of the said judgment in the United States Circuit
Court of Appeals, for the Ninth Circuit;

Now, if the said Richard E. King shall prosecute
his writ of error to effect, and answer all damages
and costs if he fail to make his plea good, and

shall appear and surrender himself in the District Court of the United States for the Western District of Washington, and after the filing in said District Court of the mandate of the said Circuit Court of Appeals, and from time to time thereafter as may be required, shall answer any further proceedings, and abide by and perform any judgment or order which may be had therein or rendered in this case, and shall abide and perform any [35] judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth District, and not depart from the said Court or District without leave thereof, then this obligation shall be void; otherwise, to remain in full force and virtue.

Witness our hands and seals this 13th day of November, 1923.

RICHARD E. KING,
Principal.
GENEVIEVE JOHNSON,
SIDNEY BRUNN,
Sureties.

Taken and acknowledged before me this 6th day of November, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
Western District of Washington,—ss.

Genevieve Johnson and Sidney Brunn, being first duly sworn, on oath, each for himself and not one for the other, deposes and says: that he is a resi-

dent of the above district, and that after paying all just debts and liabilities, he is worth the sum of Fifteen Thousand Dollars, in real property subject to execution within said district, over and above all exemptions, and exclusive of community interests, being his sole and separate property.

GENEVIEVE JOHNSON.

SIDNEY BRUNN.

Subscribed and sworn to before me this 6th day of November, 1923.

[Notarial Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

O. K.—J. W. HOAR,

Asst. U. S. District Attorney.

Approved:

NETERER,

Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [36]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that prior to this cause coming on for trial on the 30th day of October, 1923, before the Honorable Jeremiah Neterer, one of the Judges of the above-entitled court, the defendant interposed a motion to suppress the evidence for the reason and upon the ground that the officers charged by law with the enforcement of the act, for the violation of which the defendant is charged, having in their possession or under their control, certain property and effects which they intend to use as evidence against the defendant at the time of trial; that the said property and effects were illegally seized and are now unlawfully held in the manner heretofore alleged, and the Government will attempt to introduce testimony supported by and based upon the said effects and property secured by its illegal search and seizure, unless the same be suppressed; that the property seized, as petitioner is informed and believes, consists of certain narcotics, a flashlight, keys, lodge cards and other personal effects of the defendant; that all the articles mentioned were illegally and unlawfully seized, without due process of law substantially under the following circumstances: On the 16th day of April, 1923, a special agent of the United States Treasury Department, one A. B. Hamer, stopped the automobile of the defendant while he was driving along the [37] highway known as Spokane Street, at the intersection of Spokane Street and Marginal Way; that the said defendant

was proceeding in a lawful and peaceful manner, and the curtains of said automobile were up, and that no one could see inside the tonneau of said car; that the said A. B. Hamer, without a search-warrant, or any warrant, ordered the defendant to stop his car, and proceeded without the consent of the petitioner, and over his protest, and illegally and unlawfully, and without warrant of law, to search said automobile; while the defendant protested against said search, the officer aforesaid proceeded to search the tonneau of said car, and there was in the tonneau of said automobile, securely wrapped in burlap, a package, the contents of which were unknown to defendant; that thereafter the said officer raised the hood of said car, and claimed to have found thereunder other packages, and that the said packages had been placed in the automobile without the knowledge of said defendant, and that thereafter, based upon said evidence claimed to have been secured by said unlawful search and seizure, said defendant was arrested and detained, and that said search and seizure were illegal and unlawful for the following reasons:

a. That said search and seizure were unlawful for the reason that the officers making the search and seizure, failed and neglected to secure a search-warrant to search the automobile of your petitioner, and at the time of said search and seizure your petitioner was proceeding in an orderly and lawful manner along the highways of the city of Seattle, without giving cause for his detention and arrest.

The plaintiff being represented by Thomas P. Revelle, DeWolfe Emory and John W. Hoar, Esquires, District Attorney, and Assistant District Attorneys, respectively, and the defendant [38] appearing by Edward H. Chavelle, Esquire.

After defendant's counsel had argued the motion to suppress:

Mr. EMORY.—The Government takes the position, the motion is not timely made.

The COURT.—I think the motion must be denied. As a matter of fact, I think it should be made before, in view of the history of this case. I think the facts set forth in Mr. Hamer's affidavit warrants the arrest without a search-warrant. The motion is denied; exception noted.

Mr. CHAVELLE.—In order to preserve the record, I object to the introduction of any evidence. May the record so show before the jury is sworn.

The COURT.—(To Jury.) Stand up and be sworn.

Jury sworn and examined on their *voir dire*, at the conclusion of which, and after the respective counsel had used what challenges they desired, the following occurred:

The COURT.—The jury will not—

Mr. CHAVELLE.—In order to keep the record clear—

The COURT.— —be sworn to try the case.

Mr. CHAVELLE.—Before they are sworn, I would like to make this motion—

(Jury sworn to try the cause.)

The COURT.—What is the motion?

Mr. CHAVELLE.—It was necessary that the motion, as I understand it, be made before the jury is sworn.

The COURT.—No.

Mr. CHAVELLE.—That is as I read the law. The motion may then be considered as made before the jury is sworn. I move to exclude all the evidence on the ground that there is no legal evidence [39] in the case; it all having been secured by an illegal search and seizure.

The COURT.—Denied. Proceed.

Mr. CHAVELLE.—Exception, your Honor.

The COURT.—Note it.

The only opposition to the defendant's motion to suppress was the affidavit of A. B. Hamer, that affiant is a special agent of the United States Treasury Department; that affiant and John W. Majewski, city detective, for the city of Seattle, have had reliable and positive information that Richard E. King was engaged in the transportation and delivery of smoking opium and other narcotics, and that said defendant handled large quantities of opium for certain Chinese in the city of Seattle, and defendant having passed west on Spokane Street in a Mitchell automobile to a point near the Fisher Flouring Mills, early on the morning of April 16, 1923, affiant and said Majewski stationed themselves on Spokane Street near East Marginal Way where defendant would naturally pass on his way back to the city, and awaited defendant's return; that defendant was halted by Hamer and said Majewski, and immediately placed under ar-

rest, and two hundred eighty-eight five-tael tins of smoking opium contained in five sacks, were found by Hamer and said Majewski in said automobile, three (3) sacks of which were found on the floor of said car, and two (2) sacks of which were found in the hood of said car.

A jury having been duly empanelled and sworn to try the cause, and counsel for the plaintiff having made his opening statement to the jury, thereupon the following proceedings were had, and testimony given, to wit: [40]

TESTIMONY OF JOHN F. MAJEWSKI, FOR
THE GOVERNMENT.

JOHN F. MAJEWSKI, called on behalf of the Government, being first duly sworn, testified as follows:

That he is a police officer connected with the detective department; that on the 16th day of April, 1923, he was working nights from 7:30 until 3:30 in the morning, and after midnight we usually took the automobile and drove about the city and stopping any suspicious cars that we thought needed attention. On this particular morning we stopped Richard E. King, who said he was coming from West Seattle, that he had just taken some people over there and was returning to the city. The car was covered all around with curtains. Upon opening the rear door of the car, there were some bundles lying on the floor; the defendant said he did not know what they were; the defendant was arrested and taken with his car to headquarters, and upon

(Testimony of John F. Majewski.)

the car being searched at headquarters it was found to contain five sacks, three in the center or rear of the front seat, and two under the hood of the car, and the sacks upon being opened were found to contain two hundred eighty-nine cans of opium.

Mr. CHAVELLE.—Our objection goes to all of this for the reason and upon the ground that we contend that the evidence was secured illegally.

The COURT.—Let him answer. Proceed.

Mr. CHAVELLE.—Exception.

Answer.—(Continuing.) Some of them were a little longer than others. I would judge on the average they were about this size. They were about that square and possibly that long.

Q. Now, for the purpose of the record, how long would you say those sacks were—how many inches.

Mr. CHAVELLE.—For the purpose of the record also, I [41] object to all of this so that there can be no question about it, on the ground it is not proper or relevant, the evidence having been secured illegally, by an unlawful search.

The COURT.—Overruled.

Mr. CHAVELLE.—Exception.

Mr. Hamer, a federal officer, opened all the sacks to see whether they were all alike, and we talked to the defendant about the contents of the sacks. We searched the car thoroughly for papers or anything that might be of information to us, and we found two sacks under the hood. We just went and took charge of the car and searched it minutely. That at the time of the defendant's arrest, there was with the witness Mr. Hamer, a federal officer, and Mr.

(Testimony of John F. Majewski.)

Howaldt. That the opium was brought to the Post-office Building by Mr. Hamer, and left in Mr. Hamer's possession; that the defendant is a taxi driver, and working for his uncle.

On cross-examination, questioned by Mr. CHAVELLE, witness Majewski testified:

That he had not met the defendant before the 16th day of April, 1923, and when the defendant's car was stopped he did not know what was in the car. Defendant was proceeding in a peaceful, orderly manner along the highway. Witness further stated that he was out looking for prowlers; that the curtains of the defendant's car were up.

On redirect examination, questioned by Mr. HOAR, the witness testified:

Defendant said that two men hired the defendant, and loaded the sacks into his car; that the defendant was to meet them at Pioneer Square; that the witness knew it was not the opium of the defendant. [42]

On recross-examination, questioned by Mr. CHAVELLE, witness Majewski testified:

That he knew the opium did not belong to the defendant; that the car was a for hire car.

TESTIMONY OF C. HOWALDT, FOR THE GOVERNMENT.

C. HOWALDT, called as a witness on behalf of the Government, being first duly sworn, testified as

That he is a police officer, driver of a detective follows:

(Testimony of C. Howaldt.)

machine; on the night of April 16, 1923, saw the defendant King.

Q. Did you have any conversation with the defendant King at that time ?

Mr. CHAVELLE.—I object to that, your Honor, for the purpose of preserving the record, for the reason and upon the ground that any conversation that was had at that time would be evidence that was secured through an illegal search and seizure, and would not be competent.

The COURT.—Overruled.

Mr. CHAVELLE.—Exception. May my objection go to all the testimony of the witness.

The COURT.—Proceed.

Mr. CHAVELLE.— —so that I will not have to reiterate it.

The witness stated that he had no personal conversation with King, but that he overheard a conversation in which the defendant said that he got the sacks over in West Seattle.

Q. Did he state from whom ?

Mr. CHAVELLE.—I object to that, because of the fact that the evidence was secured by an illegal search-warrant. [43]

The COURT.—It is all under the same objection. Proceed.

The witness stated that the defendant said he took a couple of men over to West Seattle, and they hired him to haul the sacks back; that there were three sacks between the seats in the back of the car; that he was not present when the other two sacks

(Testimony of C. Howaldt.)

were found; that the sacks were opened by Mr. Hamer, a Federal agent.

On cross-examination by Mr. CHAVELLE, witness Howaldt testified as follows:

That they generally go out after midnight prowling in that car; that they were out prowling in the detective car on the morning of the 16th of April, 1923; that the defendant was driving a for hire car; had a license for hire; that he drove his car in front of the defendant's car so it would stop; that there was no difficulty in stopping the defendant's car; that he heard the defendant ask them to go to Pioneer Square to find the men who hired him.

On redirect examination the witness testified:

That the defendant King wanted them to drive his car to Pioneer Square to meet a couple of men he was hauling this to, supposed to be waiting there on Pioneer Square; he did not hear anything said by Mr. Majewski or Mr. Hamer about not going at that time, or any reason given by either for not going.

TESTIMONY OF A. B. HAMER, FOR THE GOVERNMENT.

A. B. HAMER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. CHAVELLE.—Note my objection on the same ground, to the testimony of this witness.

That he is a special agent of the treasury department; that on the morning of the 16th of April, 1923, at about 3:50 A. M., he was sitting in the rear

(Testimony of A. B. Hamer.)

seat of a police car of the said city of Seattle driven by police officer Howaldt, who was driving the car along East Marginal Way in the city. Majewski stopped the defendant and opened defendant's car and found in the car the narcotics in question; that he, Hamer, was in the police car and subsequently assisted in the search; [44] that he saw the defendant on the night of April 16, 1923, at about the hour of four o'clock.

Told the defendant we had found this opium in the car, and asked him who he was hauling it for. He said a couple of Chinese had employed him. He didn't know their names, and that was about the extent of the conversation with him; that the opium had been in witness' possession ever since the arrest; that there were two hundred and seventy-seven tins, besides the one marked for identification; that the opium was prepared for smoking; that a specimen had been presented to the laboratory for test.

Q. (By the COURT.) Relate the circumstances of the arrest, and what you know about it; how you happened to be there.

A. One of the officers in Tacoma called me up a couple of days previously—

Mr. CHAVELLE.—I object to what the officer in Tacoma did in regard to calling him up.

The COURT.—Overruled.

Mr. CHAVELLE.—Without the presence of the defendant. Exception.

(Testimony of A. B. Hamer.)

A. —told me that King was over there with an automobile.

Q. (By the COURT.) Not what King was doing, over there in Tacoma.

A. I thought you wanted to know how we knew he was down there.

Q. Not what anybody told you about King, in the absence of King.

A. I don't know how to explain it. I knew the boys over there were watching him.

Mr. CHAVELLE.—I object to that, and ask to have it [45] stricken and the jury instructed to disregard it.

Q. Proceed. What you know yourself about the defendant.

A. A Blue Funnel boat came over here that morning, and we watched for him that night.

Mr. CHAVELLE.—I object to that as irrelevant and immaterial.

The COURT.—The objection is overruled.

Q. Were you present when any opium was found in the car?

A. Yes, we found two bags under the hood.

Q. (By the COURT.) In view of my ruling, I will ask you this: What else, if anything, did you know with relation to the defendant that led you to arrest him?

Mr. CHEVALLE.—I object to that, your Honor, as incompetent, irrelevant and immaterial.

The COURT.—Let that be noted.

Mr. CHAVELLE.—Exception.

(Testimony of A. B. Hamer.)

A. I had known he was in this business for a long time.

Mr. CHAVELLE.—I object to that. That is a conclusion of the witness.

The COURT.—That may be stricken.

Mr. CHAVELLE.—I ask that the jury be instructed to disregard it.

Q. Mr. Hamer, did you have any reason to believe that the defendant in this case was going to receive a shipment of opium from any source, on the night in question?

Mr. CHAVELLE.—I object to that.

The COURT.—He may state whether the defendant was under suspicion, whether he had reason to believe a felony was being committed. [46]

Mr. CHAVELLE.—Exception.

A. I did.

On cross-examination by Mr. CHAVELLE, witness Hamer testified as follows:

He went along Marginal Way about three o'clock in the morning, of the morning of the 16th of April, 1923, in the police car, and stopped the cars of several people, and then the car of the defendant. That just prior to stopping the car of the defendant, he was proceeding along the highway in an orderly manner, the curtains were up on his car; that he did not have any search-warrant; that he assisted in the search of the car; that the narcotics were found in the car.

Q. You participated in this arrest?

A. Yes, sir. I did.

(Testimony of A. B. Hamer.)

Q. You participated in the search?

A. Yes, sir.

That the packages were securely wrapped, and had to be cut open in order to get into them. That there was no way for an observer on the highway seeing the packages in the car.

TESTIMONY OF DORIS McINTYRE, FOR THE GOVERNMENT.

DORIS McINTYRE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

That she is a chemist; that she made an examination of the contents of the can marked Government's Exhibit Two, for identification, and found it to be smoking opium.

TESTIMONY OF A. B. HAMER, FOR THE GOVERNMENT (RECALLED).

A. B. HAMER, recalled on behalf of the Government, testified as follows: [47]

That the appraised value of the opium was twenty-one thousand six hundred dollars.

On cross-examination, questioned by Mr. CHAVELLE, witness Hamer testified as follows:

Q. Mr. Hamer, an affidavit was filed in this case that the defendant was halted by you. Did you not swear to that?

A. He was halted by us—Majewski.

Q. Your affidavit under date of the 14th day of June, to refresh your recollection, says: "The de-

(Testimony of A. B. Hamer.)

“defendant was halted by affiant”—that is yourself—
“and said Majewski, and immediately placed under
arrest,” that is right?

A. And said Majewski.

Q. And said Majewski.

A. And said Majewski, yes.

Q. That is all.

Mr. HOAR.—At this time we offer the Govern-
ment’s Exhibit No. 2 in evidence. I think we neg-
lected to before.

Mr. CHAVELLE.—I object upon the ground and
for the reason that the same was secured by an un-
lawful search and seizure.

The COURT.—Admitted.

Mr. CHAVELLE.—Exception.

(Can of opium received in evidence, and marked
Government’s Exhibit No. 2.)

Thereupon the Government rested. This was all
the testimony and evidence offered by the Govern-
ment on behalf of the prosecution.

Mr. CHAVELLE.—We move to dismiss Counts
I and II of the indictment, for the reason and upon
the ground that all the material evidence here was
secured by an [48] unlawful search and seizure
of the defendant’s automobile, without a search-
warrant.

The COURT.—Denied.

Mr. CHAVELLE.—Exception.

DEFENDANT'S CASE.

TESTIMONY OF GENEVIEVE JOHNSON, FOR
DEFENDANT.

GENEVIEVE JOHNSON, called as a witness on behalf of the defendant, testified as follows:

That she is the mother of the defendant; operates in conjunction with her husband a for-hire automobile stand for the past ten years; that the defendant has worked for her since he came from the army, for the past five years; that part of the time he worked nights; that he worked on the evening of April 15th, and the morning of the 16th day of April, 1923; that the defendant lived with the witness.

On cross-examination, the witness Genevieve Johnson testified:

That the defendant occasionally stayed down town; that the Mitchell car was the only car he drove at that time.

TESTIMONY OF RICHARD E. KING, FOR DE-
FENDANT.

RICHARD E. KING, the defendant herein, called as a witness on his own behalf, testified as follows:

That on the night of April 15, or the morning of the 16th, 1923, he received a telephone call to come to the Seattle Hotel; working for his stepfather on the night shift; had worked for him ever since he left the army, mostly nights. The message over the telephone was "Send a cab down to the Seattle

(Testimony of Richard E. King.)

Hotel"; that he answered the call and picked up two passengers, a Chinaman [49] and a white man; told him to drive them over to West Seattle; went out on Railroad Avenue and Marginal Way, turned west on Spokane Avenue and his passengers left him around the Marine Iron Works; told him to wait for them; got there about 1:30 A. M., and waited quite a little while, probably two hours. He was tired and it was late and cold, and he fell asleep; that his passengers shook him and woke him up; told him to go back to town and take these packages which they threw into the car; curtains of car were up, it was bad weather, and the curtains had been up all the time; car belonged to stepfather; he had driven it on rent for some time; passengers told the defendant to drive to Pioneer Square and wait there; proceeded towards Pioneer Square which was near Seattle Hotel, the place they had started from.

Was stopped and car was opened and searched; the defendant further testified that they made him get out of his car, and they proceeded to open the door, and said, "What have you got?" and the defendant said he did not know, that the packages were securely wrapped; that he did not know it was opium; that he hadn't the least suspicion it was opium; that he asked the officers to take him to Pioneer Square, that if they would take him down there they would probably find the owners; they would not take him, would not believe his word, but instead took him to the police station,

(Testimony of Richard E. King.)

which is on the same street as Pioneer Square; that the arresting officers told him they were just prowling around there and stopped several cars that night.

Q. Were you decorated with the Croix de Guerre and Distinguished Service Cross?

Mr. EMORY.—That is objected to as incompetent, irrelevant and immaterial. We are not trying this man on his war record. I object to that. [50]

The COURT.—Objection sustained.

Mr. CHAVELLE.—Exception.

On cross-examination, questioned by Mr. HOAR, the defendant, Richard E. King, testified:

That there was a Chinaman and a white man standing right by the Seattle Hotel when I slowed up and said, "Are you from Main 6320?" and I said, "Yes" and they got in. They had not paid for making the trip.

That he went down Railroad Avenue to West Spokane, and west on Spokane Street to Alki Avenue; that his passengers got out of the machine; that he stopped the car right on the highway; that he could not say where they went, it was dark, that he waited two hours. That he did not see them come back, because he was asleep; that the curtains of his car were up; that he does not know who put the sacks in the car; that they woke him up and said take these packages down—that they had the door open and put them in and that is when they shook me; that he did not know that any sacks were placed under the hood; they told him to meet them

(Testimony of Richard E. King.)

at Pioneer Square; that nothing had made him suspicious of the transaction; that he is not in the habit of getting paid beforehand; had been driving car he was in that night for about six months; that he did not know the license number of the car; that car belonged to his stepfather; that he had used a Chandler car to go out home with, and had not used it all the time, except this night when he took the Mitchell car; that he did not take the car without the permission of his stepfather; that the search-light that was in the car was always in the car, and used by driver to look for house numbers. That he had not purchased light himself; that it belonged to Mr. Johnson; that he hadn't had the [51] light, that it was in the car when he happened to drive it, and that it was always left in the car; did not know what was in the sacks; they did not look suspicious to him; had stopped at the Hydak Hotel.

On redirect examination, questioned by Mr. CHAVELLE, the defendant, Richard E. King, testified:

Was employed to drive car, and did not need permission to take it; that a spot-light was generally in the car unless there was one on the car; no spot-light on this car.

TESTIMONY OF JAMES JOHNSON, FOR DEFENDANT.

JAMES JOHNSON, called as a witness on behalf of the defendant, testified as follows:

That he operates a taxi for-hire stand, for the

(Testimony of James Johnson.)

past ten years; stepfather of Richard King, who works for him; that the Mitchell car he had that night is one of the cars kept upon the stand; has a for-hire license; the spot-light belonged to the witness; that he left the stand about midnight on the 15th of April, 1923; the defendant was working the night shift; most of his business comes over the telephone.

On cross-examination, questioned by Mr. HOAR, the witness James Johnson testified as follows:

That the car in question belongs to the witness; did not remember license number of car; did not state to officer that the car was taken without his permission; bought spot-light at Melin Bros. Drug Store, at a sale, at 511 Fourth Avenue, and paid \$3.50 for it; used it because he had no spot-light on the car.

TESTIMONY OF JIM RUSSELL, FOR DEFENDANT.

JIM RUSSELL, called as a witness on behalf of the defendant, testified as follows: [52]

That he is a for-rent car driver, working for Mr. and Mrs. Johnson; was present on the morning of the 16th day of April, 1923, when Mr. King, the defendant, answered a call, and witness asked him where he was going, and he said, "Seattle Hotel." He judged it was about one o'clock.

Defendant rests.

TESTIMONY OF JOHN F. MAJEWSKI, FOR
THE GOVERNMENT (RECALLED IN RE-
BUTTAL).

JOHN F. MAJEWSKI, recalled in rebuttal, on behalf of the Government, testified as follows:

That to the best of his recollection, Mr. Johnson told him that his son had taken the car without his permission; that the car in question came from the direction of Fisher's Flouring Mill.

On cross-examination, questioned by Mr. CHAVELLE, the witness Majewski testified:

That he was not looking for any particular car.

TESTIMONY OF C. HOWALDT, FOR THE GOV-
ERNMENT (RECALLED IN REBUTTAL).

C. HOWALDT, recalled in rebuttal, testified as follows:

That the car came from Fisher's Flouring Mill.

On cross-examination, questioned by Mr. CHAVELLE, the witness Howaldt testified:

That the two roads in question do not parallel each other except for a block; that he does not know where the Marine Iron Works is.

This was all the testimony and evidence offered on behalf of the Government.

Thereupon the Government rested.

Motion for a directed verdict was made.

Mr. CHAVELLE.—At this time the defendant desires to move for a directed verdict, upon the ground and for the reason, [53] there is no evi-

dence secured here except by illegal search and seizure; that all the evidence in this case has been so secured.

The COURT.—Motion denied.

Mr. CHAVELLE.—Exception.

The COURT.—There is testimony here that the search was made by the police officers of the city, and there is likewise testimony that there was reason to believe that a felony was being committed. The motion is denied. Exception noted.

Argument was made on behalf of the Government and on behalf of the defense, and the Court gave the instructions to the jury as follows:

INSTRUCTIONS OF COURT TO THE JURY.

Gentlemen of the Jury:

The indictment is in two counts. Count I charges the defendant with fraudulently, contrary to law, importing and bringing into the United States two hundred and eighty-eight five-tael tins of opium, prepared for smoking. And Count II charged him with buying and receiving, against the provisions of law, two hundred and eighty-eight five-tael tins of this smoking opium. He has pleaded not guilty to each count in the indictment; that means he denies them. He is presumed innocent until he is proven guilty by the testimony which has been presented beyond every reasonable doubt. This burden is upon the Government to show he is guilty by that degree of proof.

In this case the issue is not complicated, but is rather simple. Many of the facts are admitted, or are not disputed. For instance, it is not disputed

that two hundred and seventy-eight, I think the testimony shows, of the five-tael tins of opium, were in the automobile driven by the defendant upon the night in question. It is admitted that the defendant [54] transported this opium, that is, he had it in his automobile, and was driving along the street; it was in his possession; that is not disputed, or admitted.

You are instructed it is a rule of evidence, and by the Act of Congress under which this prosecution is carried on, that if the Government has shown that the party charged is in the possession of opium, then it is presumed that he came by it in the way charged in the indictment in this case. When it is shown that the defendant was in the possession of the opium, then the presumption is that he imported it, or bought it, or received it, contrary to the provisions of the law, and the burden is upon him to explain that he came by it lawfully.

Now, in this case the defendant claims he did not know it was in his possession; and he did not know what it was. Now, if the defendant did not know that this was opium, then he is not guilty under the law, because no person can be convicted of an act of which he is unconscious, and be penalized under the law. So that the only issue for you to determine in this case is did the defendant know that this was opium. If he did he is guilty; if he did not, then he is not guilty. Now, to determine then, whether he knew, you must take into consideration all the circumstances that have been developed by the testimony in this case, his relation to the nar-

cotic which was in the automobile in his possession, and from all the circumstances determine what the fact is.

You, Gentlemen, are the sole judges of the facts; you must determine what the facts are from the evidence and the circumstances which have been presented. You are likewise the sole judges of the credibility of the witnesses who have testified before you; and in determining the weight or the credit [55] of any witness who has testified, you will take into consideration the demeanor of such witness upon the stand; the reasonableness of the story; the opportunity of the witness for knowing the things about which he has testified; and the interest or lack of interest in the result of this trial; and from all this determine where the truth is.

And you are instructed, that circumstantial evidence is legal and competent in a criminal case; and when the circumstances which have been detailed so dovetail into each other, and be consistent with each other, consistent with the defendant's guilt, and inconsistent with his innocence, and inconsistent with every other reasonable hypothesis except that of his guilt, then the circumstances alone would be sufficient to convict.

There is not much dispute in the evidence of the witness on the part of the Government, except the testimony of the witnesses on the part of the Government that the defendant made certain statements to them, "Yes, he presumed it was opium," or "he believed it was opium," or "had a strong con-

ception that it was opium,"—whatever the testimony is. The defendant denies that.

Some emphasis was placed by the argument of counsel for the defense with relation to the search that was made of the automobile that night, and the conduct and acts of the officers. You are instructed that the Court has heretofore upon the record in this case, all of which is not before you—has decided that the search was not unlawful, under all the circumstances which have been detailed to the Court, and of which the jury knows nothing about. The jury, therefore, has nothing to do with the search; it simply passes upon the testimony and [56] the weight and the credibility of the witnesses, and determine the facts from the testimony which was admitted before you upon the trial.

The defendant, of course, is interested, because if he is found guilty he must be punished. Would the defendant, because of his interest in this case, and would the stepfather of the defendant, because of the relation he bears to the defendant, or would the mother of the defendant, because of her interest in the defendant as his mother, would they color a statement before you which either lacks all of the truth, or which does not state the facts. Would the defendant, because of his interest, tell a story which would exonerate him from any liability, with a view of escaping the penalty of the law; these are all elements to be taken into consideration by you.

Now then, did the defendant's story ring true? You will take into consideration, for instance, the time of night when he was called out; twelve o'clock

at night, or one o'clock at night; the mission he was engaged to perform, as testified to by him. The white man and the Chinaman who entered the cab, as he has stated. Then likewise take into consideration the other circumstances, the flash-light which has been introduced in testimony, and which is shown by all the witnesses that it was in the automobile. The stepfather stating himself that he bought it. This flash-light, when you notice it, has three lights, a red, a green and a white; did that flash-light bear any relation to this trip this night? Is the red light for a danger signal, the green light for safety, and the white light the ordinary light; what is the purpose of such a light as that in an automobile? The stepfather says he bought [57] it because it was cheap; and you will take all this testimony into consideration, and connect all these matters up.

And then take the defendant's testimony, that he drove down to some place, as his testimony disclosed; the men got out, and bid him to wait; they were gone for several hours, came back, and put these sacks into the automobile. He testified he did not know the men then, and don't know who they are now, and hadn't paid him yet. Does it sound reasonable for a man of his discretion and experience in life to do that, without making any inquiry, and finding three packages in the automobile, and two under the hood of the car. He testified he was asleep and did not know these bags were there. Does that sound reasonable? Would any stranger place upon an engine in an automobile under the hood, without the driver's knowledge, anything, especially of the type as has

been testified to here—the size of the bags? Did the defendant himself put these things in the automobile; did he himself put these bags under the hood? These are all circumstances to be taken into consideration. Did his testimony ring true? If it did, then he ought not to be convicted. If it did not, then he should be convicted. The Government does not want him convicted unless he is guilty, and unless the testimony shows he is guilty beyond a reasonable doubt; but the Government does not want him acquitted if the testimony shows that he is guilty. We can only maintain Government by having law enforcement, and if courts and juries fail to function and discharge the duties which the law fixes, it would only be a short time when a condition of anarchy would arise in this country. We know that this narcotic traffic is the worst that we have to meet in our civilization; but simply because that is so, and the [58] traffic is bad, why no innocent man should be convicted; but when the testimony shows that persons are guilty, then there ought to be no hesitancy.

Some reference has been made to the mother. We all sympathize with the mother; we know it is always the innocent that suffer. If the Court would fail to function simply because the innocent suffer, we might as well close the books and the courts.

You will therefore approach this issue fairly, as twelve fair-minded men, giving the defendant a square deal, and giving the Government a square deal, and conclude, as in your conscience, the law and the facts warrant and justify.

You are instructed that a reasonable doubt is just such a doubt as the term implies, a doubt for which you can give a reason; it is not a speculative, imaginary or a conjectural doubt; it is a doubt which is created by the want of evidence, or by the evidence itself. A juror is satisfied beyond a reasonable doubt when he is convinced to a moral certainty of the guilt of the defendant.

It will require your entire number of twelve to agree upon a verdict, and when you have agreed you will cause it to be signed by your foreman, whom you will elect immediately upon retiring to your jury-room. The verdict is in the usual form—a blank before guilty; you will write “Is” or “Not” as you may find; you may find the defendant guilty on one or both counts, or not guilty on one or both counts, as you may find.

Thereupon the Court, not having given the instructions asked by the defendant, the Court was requested to give instructions Nos. 1, 2 and 3, as follows: [59]

REQUESTED INSTRUCTIONS OF COURT TO THE JURY.

I.

The Court directs you to find a verdict for the defendant, upon the ground of the insufficiency of the evidence, the search and seizure having been illegal and unlawful, in that while the defendant was proceeding in a peaceful manner upon a highway in the city of Seattle, county of King, State of Washington, within the jurisdiction of this Honorable Court,

he was halted by a federal agent, and his car searched by said federal agent, and the defendant placed under arrest by said federal agent, all without any search-warrant whatsoever, and the evidence obtained was so obtained by such unlawful search and seizure.

II.

The Court instructs you to find a verdict for the defendant, upon the ground of the insufficiency of the evidence, the search and seizure having been illegal and unlawful, in that while the defendant was proceeding in a peaceful manner upon a highway in the city of Seattle, county of King, State of Washington, within the jurisdiction of this Honorable Court, he was halted by a federal agent, and his car searched by said federal agent, and the defendant placed under arrest by said federal agent, all without any search-warrant whatsoever, and the evidence obtained was so obtained by said unlawful search and seizure.

III.

You are directed that the evidence in this case has shown that the defendant is the operator of a for-hire automobile, and if the defendant has satisfied the jury that he had no knowledge of and used due diligence to prevent the presence of the opium in said automobile, then it is your duty to acquit him. [60]

The COURT.—Take your exceptions to the instructions by number.

Mr. CHAVELLE.—All right. Requested Instructions Nos. I, II and III. We take an exception.

The COURT.—Exception noted.

The jury then retired, and after deliberation returned a verdict of guilty as charged, under both counts of the indictment.

Thereafter the defendant gave notice of his intention to ask for a new trial, and for arrest of judgment.

Thereupon, within the time allowed, before sentence was imposed, the defendant moved for a new trial, upon the following grounds:

1. Error in law committed by the trial Court in refusing to grant the motion of the defendant to suppress the evidence.

2. That said verdict was against and contrary to law.

3. That said verdict was against and contrary to the evidence.

4. Insufficiency of the evidence to justify the verdict.

5. Errors of law occurring during the trial, and excepted to by the said defendant.

6. Refusal of the Court to grant motion of the defendant to dismiss Counts I and II of said indictment, on the ground of the insufficiency of the evidence to sustain either count.

7. Error of the trial Court in refusing to direct a verdict for said defendant of not guilty.

8. Refusal of the Court to instruct the jury as requested by the instructions of the defendant.

Said defendant also moved for arrest of judgment upon [61] the following grounds:

1. That the evidence introduced at the trial was insufficient to sustain the verdict rendered herein.

2. That the motion to suppress the evidence by reason of the illegal and unlawful search and seizure was erroneously denied.

3. Variance between the indictment and proof introduced at the time of trial.

Thereupon the Court denied each of said motions. The Government moved for judgment and sentence, and the Court then entered judgment and sentence as follows: That the defendant be confined in the penitentiary at McNeil Island for a term of not more than six years, and pay a fine of fifty dollars.

And now, in furtherance of justice, and that right may be done the defendant Richard E. King, said defendant prays that this bill of exceptions may be settled, allowed, signed and sealed by the Court, and made a part of the record.

EDWARD H. CHAVELLE,
Attorney for Defendant Richard E. King. [62]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

ORDER SETTLING BILL OF EXCEPTIONS.

Now, on this 12th day of Dec. 1923, the above cause came on for hearing on the application of the defendant, Richard E. King, to settle the bill of exceptions in this case. Counsel for both parties appeared, and it further appearing to the Court that said bill as heretofore lodged with the clerk is duly and seasonably presented for settlement and allowance, and it further appearing that said bill of exceptions contains all of the material facts occurring upon the trial of the cause, together with the exceptions thereto, and all the material matters and things occurring upon the trial, except the exhibits introduced in evidence which are hereby made a part of said bill of exceptions by reference and incorporation; and the Court being duly advised, it is by the Court

ORDERED, that said bill of exceptions be and it is hereby settled as a true bill of exceptions in said cause, which contains all of the material facts, matters, things, and exceptions thereto occurring upon the trial of said cause and not of record heretofore, and the same is hereby certified accordingly by the undersigned Judge of this Court, who presided at the trial of said cause, as a true, full and correct bill of exceptions, and the Clerk of the Court is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court [63] of Appeals for the Ninth Circuit.

JEREMIAH NETERER,
United States District Judge.

Received bill of exceptions this 13th day of November, 1923.

THOS. P. REVELLE,
U. S. Attorney.

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 12, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [64]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING,
Defendant.

ORDER EXTENDING TIME TO AND INCLUDING JANUARY 3, 1924, TO FILE RECORD AND DOCKET CAUSE.

For good cause now shown, it is ORDERED, that the time for filing the record in the above-entitled cause in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit,

be and the same is hereby extended to the 3d day of January, 1924.

Done in open court this 8th day of December, 1923.

JEREMIAH NETERER,

Judge.

O. K.—J. W. HOAR,

Spec. Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 8, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [65]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7642.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

ORDER EXTENDING TIME TO AND INCLUDING JANUARY 31, 1924, TO FILE RECORD AND DOCKET CAUSE.

For good cause now shown, it is ORDERED, that the time for serving and filing the record in the above-entitled cause in the office of the Clerk of the Circuit Court of Appeals, be and the same is hereby extended to the 31st day of January, 1924.

Done in open court this 29th day of December, 1923.

JEREMIAH NETERER,

U. S. District Judge.

O. K.—MATTHEW W. HILL,

U. S. District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 31, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [66]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare copies of the following documents and papers in the above cause and forward them under your certificate and seal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, as a transcript of record in said cause, viz.:

1. Indictment.

2. Petition to suppress evidence.
3. Amended petition to suppress evidence.
4. Affidavit of A. B. Hamer.
5. Arraignment and plea.
6. Assignments of error.
7. Bill of exceptions.
8. Bond on appeal.
9. Bond for writ of error.
10. Certificate of Clerk of U. S. District Court
to transcript of record.
11. Citation on writ of error.
12. Court's instructions to jury.
13. Hearing on motion for new trial and in arrest
of judgment and order denying same.
14. Motion for new trial.
15. Motion in arrest of judgment.
16. Order allowing writ of error.
17. Petition for writ of error.
18. Praecipe for transcript of record.
19. Sentence.

EDWARD H. CHAVELLE,
Attorney for Defendant.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Nov. 15, 1923. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy. [67]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7643.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD E. KING
Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 67, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees

and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [68]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 171 folios at 15c	\$25.65
Certificate of Clerk to transcript of record, 4 folios at 15c60
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record, amounting to \$26.45, has been paid to me by attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 26th day of January, 1924.

[Seal]

F. M. HARSHBERGER,
Clerk U. S. District Court, Western District of
Washington. [69]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 7643.

RICHARD E. KING,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

WRIT OF ERROR.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America:

To the Honorable Judge of the District Court
of the United States for the Western District
of Washington, Northern Division:

Because in the record and proceedings, as also
in the rendition of judgment, of a plea which is
in the said District Court before you, between the
United States of America, as plaintiff, and Richard
E. King, as defendant, a manifest error hath
happened, to the great damage of the said defendant,
Richard E. King, as by his complaint appears, and
we being willing that error, if any hath been, should
be corrected, and full and speedy justice done to
the parties aforesaid in this behalf, do command you,
if judgment be therein given, that then under your
seal, distinctly and openly, you send the record
and proceedings aforesaid, with all things con-
cerning the same, to the United States Circuit Court

of Appeals for the Ninth Circuit, together with this writ, within thirty days from the date hereto, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done. [70]

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 13th day of November, 1923.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the
Western District of Washington, Northern
Division.

Service of within writ of error admitted, and receipt of copy thereof acknowledged, November 13th, 1923.

THOS. P. REVELLE,
MPO,
Attorney for Defendant in Error.

Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [71]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7643.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. KING,

Defendant.

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to
the United States of America, and to THOMAS
P. REVELLE, United States Attorney for the
Western District of Washington, Northern
Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit, at San Francisco,
in the State of California, within thirty days from
date hereof, pursuant to a writ of error filed in
the clerk's office of the District Court of the United
States, for the Western District of Washington,
Northern Division, wherein the said Richard E.
King is plaintiff in error, and the United States
of America is defendant in error, to show cause,
if any there be, why judgment in the said writ
of error mentioned should not be corrected and
speedy justice should not be done to the party in
that behalf.

WITNESS, the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 13th day of November, 1923.

[Seal]

JEREMIAH NETERER,
United States District Judge.

Received copy, November 13, 1923.

THOS. P. REVELLE,
O,
Attorney for Plaintiff.

Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [72]

[Endorsed]: No. 4210. United States Circuit Court of Appeals for the Ninth Circuit. Richard E. King, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Received Jan. 30, 1924.

F. D. MONCKTON,
Clerk.

Filed March 6, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.